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RADER, FISHMAN & GRAUER PLLC  
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SUITE 140  
BLOOMFIELD HILLS, MI 48304-0610

EXAMINER
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ROSEN, NICHOLAS D

ART UNIT	PAPER NUMBER
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3625

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/800,444

**Applicant(s)**

CHU ET AL.

**Examiner**

Nicholas D. Rosen

**Art Unit**

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 1-56 have been examined.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

#### **Claims 1-37**

Claims 1, 4, 5, 6, 10, 13, 14, 17, 18, 22, 23, 26, 27, 31, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soulanille et al. (U.S. Patent 7,110,993) in view of Bates et al. (U.S. Patent 6,801,906). As per claim 1, Soulanille discloses an information distribution system, comprising: a user subsystem, said user subsystem providing for a request and a response, wherein said user subsystem provides for

receiving said request and providing said response (Abstract; column 8, line 59, through column 9, line 6); a listing subsystem, said listing subsystem providing for a plurality of listings, wherein at least a subset of said listings are included in said response (Abstract; column 9, lines 7-20); and an administrative subsystem, said administrative subsystem providing for a tier, wherein said administrative subsystem selectively identifies two or more listings within said response for inclusion in said tier, wherein said listings within said tier are ordered in accordance with at least one of: (a) a random heuristic; (b) a weighted random heuristic; and (c) a placement heuristic not applied to all of the listings in said response (Abstract; column 9, lines 7-20; column 21, line 59, through column 22, line 50). Soulanille does not disclose a plurality of groups, wherein each said listing in the response is associated with at least one said group, each said group being determined at least in part according to the request, but Bates discloses an information distribution system including a plurality of groups, wherein each listing in the response to a search request is associated with at least one said group, each said group being determined at least in part according to the request (Abstract; column 3, lines 18-45). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to include such a plurality of groups, for at least the stated advantage of concentrating on material which is new (Bates, column 1, line 65, through column 2, line 14).

As per claim 4, Soulanille discloses a plurality of tiers (Abstract; column 9, lines 7-20; column 16, line 57, through column 17, line 23; column 21, line 59, through

column 22, line 50; Figure 7). (The paid listings from advertisers are regarded as one tier; the unpaid listings following them as a second tier.)

As per claim 5, Soulanille discloses that said listings within each tier are ordered in accordance with at least one of: (a) a random heuristic; (b) a weighted random heuristic; and (c) a placement heuristic (*ibid.*, as cited in claim 4).

As per claim 6, Soulanille discloses that each listing in said response is included in one of said plurality of tiers (*ibid.*, as cited in claim 4).

As per claim 10, the listings belonging to the same tier could easily belong to the same group, if, for example, the highest priority group in Bates filled the tier, or the higher priority groups in Bates produced no results, leaving the tier to be filled by the lowest priority group.

As per claim 13, Soulanille discloses a plurality of payment type attributes, wherein each said listing in said response is associated with at least one payment type attribute (Figure 7; column 16, line 57, through column 17, line 23).

As per claim 14, Soulanille discloses that each said listing in said tier shares the payment type attribute (Figure 7; column 16, line 57, through column 17, line 23).

As per claim 17, in the system of Soulanille, different users, or the same user, can make different search requests, and receive different responses (implied throughout, e.g., column 8, line 59, through column 9, line 20), and Soulanille discloses a first response including a tier of paid listings (Figure 7; column 16, line 57, through column 17, line 23; column 21, line 59, through column 22, line 50). Soulanille does not disclose a second response not including a tier of paid listings, but in the case of

someone requesting results on a search term for which no advertiser had bid, such a tier would be absent, and presumably only unpaid listings (as disclosed in column 17, lines 15-23) would be displayed. It is further noted that a second response, responding to a different request, even if it did include a tier of paid listings, would not include the same set of paid listings, and in that sense, would not include "said tier."

As per claim 18, given the ability of users in the system of Soulanille to enter different search requests, searching on different search terms, such first and second request corresponding to first and second results follow.

As per claim 22, Soulanille discloses a position adjustment factor wherein at least one listing includes said position adjustment factor, **as per claim 23**, at least one listing that includes the position adjustment factor being included in the tier (column 21, line 51, through column 22, line 50).

As per claim 26, Soulanille discloses a plurality of tiers and a means for selecting a category (Figure 7; column 16, line 57, through column 17, line 23; column 21, line 59, through column 22, line 50), and a plurality of sponsors who may be national sponsors (ibid.; Figure 7 shows online merchants whose reach appears to be national if not international), as well as a common category, in a sense, shared by the sponsors (ibid., the category being zip drives). Soulanille does not expressly disclose that the response is comprised entirely of listings associated with the group of national sponsors sharing the common category, because in Figure 7, not all of the listings are sponsored listings, but Soulanille discloses, "Preferably, unpaid listings are displayed if there are an insufficient number of listings to fill the 40 slots in a search results page," (column 17,

lines 15-17), implying that when there was a sufficient number of paid listings, only paid, sponsored listings would be displayed.

As per claim 27, Soulanille discloses a tier including three listings (Figure 7).

As per claim 31, Soulanille discloses a per-hit fee, wherein at least one listing in the response is associated with the per-hit fee (column 11, lines 54-67; column 16, line 57, through column 17, line 23; column 19, line 53, through column 20, line 13; column 21, line 51, through column 22, line 50; Figure 7).

As per claim 36, Soulanille discloses a category key word, a request including the category key word (Figure 7).

Claims 2 and 3 rejected under 35 U.S.C. 103(a) as being unpatentable over Soulanille and Bates as applied to claim 1 above, and further in view of Weidlich ("Search Engine Marketing Revving up"). As per claim 2, Soulanille discloses a plurality of priority metrics (column 21, line 59, through column 22, line 50), but does not expressly disclose that the administrative subsystem uses at least some (and more than one) of the priority metrics (together) to selectively identify the listings for inclusion in the tier. However, Weidlich teaches using several priority metrics together to selectively identify listings for inclusion in a tier of search results (especially paragraph beginning, "True search engines use software robots"). Hence, doing this would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention, for the obvious advantage of taking multiple relevant factors into account in assembling listings for the tier.

As per claim 3, Soulanille discloses a plurality of rankings, wherein the administrative subsystem uses said rankings to selectively identify the subset of listings for inclusion in the tier (Figure 7; column 16, line 57, through column 17, line 23; column 21, line 51, through column 22, line 50).

Claims 7, 8, 9, 11, 12, 15, 19, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soulanille et al. (U.S. Patent 7,110,993) and Bates et al. (U.S. Patent 6,801,906) as applied to claim 1 above (and as applied to claim 36 above in the case of claim 37), and further in view of Might et al. (U.S. Patent Application Publication 2003/0177076). As per claim 7, Soulanille discloses a category selection (near the top of Figure 7), but does not expressly disclose that the request includes the catalog selection, and that the selective identification of the subset of listings is influenced by said category selection (although this could be regarded as implied, because why else have a category selection feature in the webpage?), but Might teaches identifying a subset of listings based on a category selection (paragraphs 19 and 27). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the request to include the catalog selection, and for the selective identification of the subset of listings to be influenced by said category selection, for the obvious advantage of finding businesses selling desired products or services.

As per claim 8, Soulanille discloses a geography selection (near the top of Figure 7), but does not expressly disclose that the selective identification of the subset of listings is influenced by said geography selection (although this could be regarded as



implied, because why else have a geography selection feature in the webpage?), but Might teaches identifying a subset of listings based on a geography selection (paragraphs 19 and 27). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the selective identification of the subset of listings to be influenced by said geography selection, for the obvious advantage of finding conveniently located businesses selling desired products or services.

As per claim 9, this is at least as obvious as claim 7, for the reasons set forth above in regard to claim 7.

As per claim 11, Soulanille does not disclose a plurality of geography attributes and a plurality of category attributes, wherein each said listing in the response is associated with at least one said geography attribute and at least one said category attribute (although Figure 7 in Soulanille shows means for selecting at least one said geography attribute and at least one said category attribute), but Might teaches associating listings in a response with geography attributes and/or category attributes (paragraphs 19 and 27). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for each said listing to be associated with at least one said geography attribute and at least one said category attribute, for the obvious advantage of finding businesses conveniently located and selling desired products or services.

As per claim 12, Might likewise teaches that listings share geography and/or category attributes (paragraphs 19 and 27). Hence, it would have been obvious to one

of ordinary skill in the art of electronic commerce at the time of applicant's invention for each listing in the tier to share said geography attribute and said category attribute, for the obvious advantage of finding businesses conveniently located and selling desired products or services.

As per claim 15, Soulanille discloses a category selection and a category key word, and wherein a request includes a category key word (Figure 7), although Soulanille does not expressly disclose that the request also includes the category selection; however, Might teaches a request including a category selection, influencing the listings to be included in the response (paragraphs 19 and 27). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention, for the obvious advantage of finding businesses selling desired products or services.

As per claim 19, Soulanille provides for (b) a national request (Figure 7; column 16, line 51, through column 17, line 23). Might teaches using category and geographic area to constrain requests, but constraint by geographic area is optional, so if it is not used, there is a national tier (paragraphs 19 and 27); thus, the listings are associated with a national tier in Soulanille and in Might. Might further teaches the national tier including multiple levels of tiers by category (paragraph 27). Soulanille shows first, second, and third responses (Figure 7), if one regards each listing as a response. If not, Soulanille discloses first and second responses (column 9, lines 7-20), and duplication of known features for multiple effect is held to be within the level of one of ordinary skill in the relevant art (*St. Regis Paper Co. vs. Bemis Co.*, 193 USPQ 8, 11;

549 F.2d 833 [7th Cir. 1977]; *In re Harza*, 124 USPQ 378, 380; 274 F.2d 669 [CCPA 1960]). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the plurality of responses to include a first, a second, and a third response, for the obvious advantage of grouping listings according to paid status, categorization, presence of keywords, etc., to assist users in finding desired listings, and profiting from providing the service.

As per claim 37, Soulanille discloses a category selection (Figure 7), although Soulanille does not expressly disclose that the request also includes the category selection; however, Might teaches a request including a category selection (paragraphs 19 and 27). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the request to include a category selection, for the obvious advantage of finding businesses selling desired products or services.

Claims 16 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soulanille et al. (U.S. Patent 7,110,993) and Bates et al. (U.S. Patent 6,801,906) as applied to claim 1 above, and further in view of Corn et al. (U.S. Patent Application Publication 2004/0167845). As per claim 16, Soulanille discloses a plurality of per-hit fees (e.g., Figure 7; column 16, line 57, through column 17, line 23). Soulanille does not expressly disclose that there is a minimum bid amount and all listings within the tier are associated with per-hit fees that exceed said minimum bid amount (although the example of Figure 7, where all listings in the tier are associated with per-hit fees that exceed an apparent minimum of \$0.01, is highly suggestive), but Corn teaches a

minimum bid amount, such that listings would all exceed the minimum bid amount (Abstract; paragraphs 6-10). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have such a minimum bid amount, for the stated advantages of increasing revenue, and better enabling a commercial search marketplace to represent multiple markets.

As per claim 24, Soulanille discloses a plurality of fees and a minimum fee, at least in the sense that no fee shown is smaller than the minimum of \$0.01 per hit (Figure 7; column 16, line 57, through column 17, line 23). Soulanille further discloses, "Preferably, unpaid listings are displayed if there are an insufficient number of listings to fill the 40 slots in a search results page," (column 17, lines 15-17), implying that if there are a sufficient number of listings, each listing may be associated with a fee. Corn teaches a minimum bid amount, such that listings would all exceed the minimum bid amount (Abstract; paragraphs 6-10). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have such a minimum fee, for the stated advantages of increasing revenue, and better enabling a commercial search marketplace to represent multiple markets.

Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soulanille et al. (U.S. Patent 7,110,993) and Bates et al. (U.S. Patent 6,801,906) as applied to claim 1 above, and further in view of Littlefield et al. (U.S. Patent 6,564,208). As per claim 20, Soulanille does not disclose an enhanced display format, wherein at least one said listing in said response includes said enhanced display format, but Littlefield teaches enhanced display formats, wherein at least one listing in a

response includes the enhanced display format (column 3, line 58, through column 4, line 20). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention, for the stated advantages of enticing search engine users to select the search results with enhanced display formats, and profiting from fees for such enhanced displays.

As per claim 21, given listings with an enhanced display format, it would be obvious for such listings to be in the tier, the reasons set forth above in regard to claim 20 being applicable.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Soulanille et al. (U.S. Patent 7,110,993) and Bates et al. (U.S. Patent 6,801,906) as applied to claim 1 above, and further in view of Singh et al. (U.S. Patent Application Publication 2006/0190328). Soulanille discloses a per-hit fee type, a plurality of per-hit fee values, wherein at least two listings in a response are associated with the per-hit fee type, and wherein each listing associated with the per-hit fee type is associated with at least one per-hit fee value (Figure 7; column 16, line 57, through column 17, line 23; column 21, line 59, through column 22, line 50), but Soulanille does not expressly disclose that there is a minimum bid increment, and that all per-hit fee values are in accordance with the minimum bid increment (although the listings in Figure 7 appear to be in increments of \$0.01 bid per hit). However, it is well known for auctions to have minimum bid increments, as taught, for example, by Singh (paragraph 73). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to include a minimum bid increment, and have all per-hit

fee values be in accordance with the minimum bid increment, for the obvious advantages of increasing the amounts paid as per-hit fees, and avoiding the difficulties of having to deal with tiny fractional payments.

Claims 28, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soulanille et al. (U.S. Patent 7,110,993) and Bates et al. (U.S. Patent 6,801,906) as applied to claim 1 above, and further in view of official notice. As per claim 28, Soulanille discloses a plurality of tiers, and a plurality of tier processing rules, wherein the number of tiers, it is implied, can differ according to whether there be a sufficient number of paid listings (Figure 7; column 16, line 57, through column 17, line 23; column 21, line 59, through column 22, line 50; see reasoning set forth above with regard to claim 26), and in the system of Soulanille, different users, or the same user, can make different search requests, and receive different responses (implied throughout, e.g., column 8, line 59, through column 9, line 20). Soulanille does not expressly disclose that the tier processing rules differ for different search requests, but official notice is taken that it is well known to apply different known variations of a technique in different cases; hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to apply different disclosed tier processing rules for different search requests, for such obvious advantages as testing to determine which rules worked best, or applying the set of rules either specifically requested in a particular case, or believed to be most suitable to the circumstances.

As per claim 29, Soulanille discloses an administrator interface (for example, column lines 9-33), but does not disclose that the administrator interface provides for modifying the tier processing rules. However, given the plurality of tier processing rules disclosed by Soulanille, and the application of different processing rules to different requests, as found obvious with regard to claim 28 above, this is held to be obvious, for the motive of accomplishing the application of preferred different rules.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Soulanille et al. (U.S. Patent 7,110,993) and Bates et al. (U.S. Patent 6,801,906) as applied to claim 1 above, and further in view of Schena et al. (U.S. Patent Application Publication 2001/0003177). A user of Soulanille's system would have to have some location, and Soulanille's disclosure of a "What City" feature (Figure 7) implies including a location of the user as part of a request, but Soulanille does not disclose that the system automatically includes the user location as part of a request. However, it is well known to automatically include a user location as part of a search request, as taught by Schena (e.g., paragraphs 10, 11, 52, 53, and 54). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the system to automatically include the user location as part of the search request, for the obvious advantage of finding potential sellers convenient to the user's location, as in Schena.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Soulanille et al. (U.S. Patent 7,110,993) and Bates et al. (U.S. Patent 6,801,906) as applied to claim 31 above, and further in view of Mangold et al. (U.S. Patent Application

Publication 2004/0186769). Soulanille does not disclose a variable per-hit fee, but Mangold discloses variable per-hit fees (Abstract; paragraphs 5 and 25). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the per-hit fee to be a variable per-hit fee, for the stated advantage of charging according to the user's location, and thus his presumed likelihood of buying from the advertiser.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Soulanille et al. (U.S. Patent 7,110,993), Bates et al. (U.S. Patent 6,801,906), and Mangold et al. (U.S. Patent Application Publication 2004/0186769) as applied to claim 32 above, and further in view of Mahanta et al. ("BT Dotcom"). Soulanille discloses that the system comprises a number of hits and a time in which to measure said number of hits (e.g., column 19, line 53, through column 20, line 13), but does not disclose that the number of hits and time in which to measure said number of hits influence a variable per-hit fee, nor does Mangold; but it is well known for a number of hits or period of time to influence a per-hit fee, as taught in Mahanta (paragraph beginning, "E-tailers are in for a reality check, too"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the number of hits or period of time to influence the variable per-hit fee, for such obvious advantages as charging more during times of the year when advertising is more in demand, or as in Mahanta, assuring the usefulness of a site by requiring a minimum number of impressions or click-throughs.



Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Soulanille et al. (U.S. Patent 7,110,993) and Bates et al. (U.S. Patent 6,801,906) as applied to claim 31 above, and further in view of Acres (U.S. Patent Application Publication 2002/0010015). Soulanille does not disclose a variable per-hit fee, but Acres discloses variable per-hit fees (paragraph 6). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the per-hit fee to be a variable per-hit fee for at least the stated advantage of charging in accordance with the demographic value of a user.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Soulanille et al. (U.S. Patent 7,110,993), Bates et al. (U.S. Patent 6,801,906), and Acres (U.S. Patent Application Publication 2002/0010015) as applied to claim 32 above, and further in view of Mahanta et al. ("BT Dotcom"). Soulanille discloses that the system comprises a number of hits and a time in which to measure said number of hits (e.g., column 19, line 53, through column 20, line 13), but does not disclose that the number of hits and time in which to measure said number of hits influence a variable per-hit fee, nor does Acres; but it is well known for a number of hits or period of time to influence a per-hit fee, as taught in Mahanta (paragraph beginning, "E-tailers are in for a reality check, too"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the number of hits or period of time to influence the variable per-hit fee, for such obvious advantages as charging more during times of the year when advertising is more in demand, or as in Mahanta,

assuring the usefulness of a site by requiring a minimum number of impressions or click-throughs.

Claims 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soulanille et al. (U.S. Patent 7,110,993) and Bates et al. (U.S. Patent 6,801,906) as applied to claim 1 above, and further in view of Acres (U.S. Patent Application Publication 2002/0010015). As per claim 34, Soulanille does not disclose a plurality of per-hit fee types, but a plurality of per-hit fee types are well known, as taught, for example, by Acres (paragraphs 4, 5, and 6). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the system to comprise a plurality of per-hit fee types, for the obvious advantage of arranging fee types (flat payment per hit, commission on sales, fee depending on user demographics, etc.) most suitable to the circumstances, and accepted as most satisfactory to the advertiser and the search engine owner.

As per claim 35, the plurality of listings in Soulanille necessarily includes a first listing (e.g., as in Figure 7, or column 22, lines 19-33), and if there are a number of per-hit fee types, e.g., payment of a flat fee plus a commission on sales, these could all be associated with the first listing as much as with any other listing. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the first listing to be associated with the more than one per-hit fee type, for the obvious advantage of profiting from different fee types, and in particular because different fee types would add to the effective value of a bid, and thus the

incentive to list it first, e.g., a bid of \$0.08 per click plus 1% of resulting sales would be more valuable than a bid of \$0.08 per click.

**Claims 38-47**

Claims 38, 39, 40, 41, 42, 44, 45, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soulanille et al. (U.S. Patent 7,110,993) in view of the anonymous article, "Google Comes out ahead," and Bates et al. (U.S. Patent 6,801,906). As per claim 38, Soulanille discloses a system for distributing information, comprising: a depository of information, said depository of information including a plurality of listings (Abstract; Figure 1; column 7, line 4, through column 8, line 3); a server, said server including a request from a user, a response, a plurality of tiers, and a plurality of administrative rules, said plurality of administrative rules including a plurality of placement heuristics response (Abstract; column 9, lines 7-20; column 16, line 57, through column 17, line 23; column 21, line 59, through column 22, line 50; Figure 7; the paid listings from advertisers are regarded as one tier, the unpaid listings following them as a second tier); wherein said server is configured to generate said response from said request by accessing the depository of information and said administrative rules (column 7, lines 15-59; column 8, lines 19-26; column 16, line 57, through column 17, line 23; column 21, line 59, through column 22, line 50); wherein said administrative rules provide for identifying two or more listings in the response as belonging to a tier identified as belonging to a plurality of tiers; and wherein said administrative rules prioritize said listings within the tier using the plurality of placement heuristics (Abstract; column 16, line 57, through column 17, line 23; column 21, line 51, through column 22,

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line 50; Figure 7). Soulanille does not expressly disclose that the administrative rules also prioritize the listings within other tiers, such as the second tier of non-paid listings, although this might be considered inherent, on the grounds that the order of listings in the second tier would have to be selected somehow; but it is well known to prioritize listings in non-paid tiers returned by search engines (e.g., by apparent relevance to the search terms in a request, as is done by Google and others), as taught by "Google Comes out ahead" (whole article, especially Abstract and paragraph beginning "Google has become the search engine of choice"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the administrative rules to prioritize listings within the plurality of tiers, for the stated advantage of putting the unpaid listings in a reasonable order, such as with those most likely to be relevant at the top.

Soulanille does not disclose a plurality of groups, wherein each said listing in the response is associated with at least one said group, each said group being determined at least in part according to the request, but Bates disclose an information distribution system including a plurality of groups, wherein each listing in the response to a search request is associated with at least one said group, each said group being determined at least in part according to the request (Abstract; column 3, lines 18-45). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to include such a plurality of groups, for at least the stated advantage of concentrating on material which is new (Bates, column 1, line 65, through column 2, line 14).

As per claim 39, Soulanille discloses a plurality of tiers including a first tier and a second tier, the plurality of placement heuristics including at least a first placement heuristic ordering listings within the first tier (*ibid.*, as applied to claim 38 above), and a second placement heuristic ordering the listings within the second tier is obvious as set forth above with regard to claim 38 above. If the first heuristic involves the amounts bid for paid listings, as in Soulanille, then the first placement heuristic cannot be identical to the second placement heuristic.

As per claim 40, Soulanille discloses that at least each listing in the first tier of the response is associated with at least one of the priority metrics (Figure 7; column 16, line 51, through column 17, line 23; column 21, line 51, through column 22, line 50). Given a second tier ordered on some basis (e.g., a measure of apparent relevance), it would follow that each listing in the second tier of the response would also be associated with at least one of the priority metrics.

As per claim 41, Soulanille discloses that the priority metrics influence the administrative rules in selectively identifying listings for inclusion in the (first) tier (*ibid.*, as per claim 40, and especially column 22, lines 34-50).

As per claim 42, Soulanille discloses that the listings are selectively identified for inclusion in the (first) tier in accordance with priority metrics (*ibid.*, as per claim 40, and especially column 22, lines 34-50).

As per claim 44, Soulanille discloses a plurality of rankings, wherein each listing in the response may have can include at least one said ranking, wherein said listings can be ranked in accordance with priority metrics, and wherein the administrative

subsystem uses the rankings to selectively identify listings for inclusion in a first tier (Figure 7; column 16, line 51, through column 17, line 23; column 21, line 51, through column 22, line 50).

As per claim 45, Soulanille discloses a plurality of listings with associated priority metrics, wherein random selection is employed to determine placement, with an increased probability, but not a certainty, of more favorable placement given to the listings with higher bids/priority metrics (Figure 7; column 16, line 51, through column 17, line 23; column 21, line 51, through column 22, line 50), which would in some cases result in a first listing having a higher priority metric and a second listing being given more favorable placement.

As per claim 46, Soulanille discloses a plurality of listings with associated per-hit fees, wherein random selection is employed to determine placement, with an increased probability, but not a certainty, of more favorable placement given to the listings with higher per-hit fees (Figure 7; column 16, line 51, through column 17, line 23; column 21, line 51, through column 22, line 50; see also column 19, line 53, through column 20, line 13), which would in some cases result in a first listing having a higher per-hit fee and a second listing being given more favorable placement.

Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Soulanille et al. (U.S. Patent 7,110,993), the anonymous article, "Google Comes out ahead," and Bates et al. (U.S. Patent 6,801,906) as applied to claim 41 above, and further in view of Might et al. (U.S. Patent Application Publication 2003/0177076). Soulanille does not expressly disclose that the affiliations with said groups influence the

administrative rules in selectively identifying listings for inclusion in a tier (although the "Select a Category" and "What City?" features in Figure 7 are highly suggestive; also, Bates's teaching regarding the ordering of results by groups can be interpreted as showing that affiliations with groups determine inclusion in a top [or other] tier), but Might teaches a plurality of groups, wherein listings are associated with at least one group, and wherein the affiliations with said groups influence the administrative rules in selectively identifying listings for inclusion in a response (paragraphs 19 and 27). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have a plurality of groups, each said listing associated with at least one group, the affiliations with said groups influencing the administrative rules in selectively identifying listings for inclusion in a tier, for the obvious advantage of finding businesses conveniently located and selling desired products or services.

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Soulanille et al. (U.S. Patent 7,110,993) the anonymous article, "Google Comes out ahead," and Bates et al. (U.S. Patent 6,801,906) as applied to claim 38 above, and further in view of Littlefield et al. (U.S. Patent 6,564,208). Soulanille discloses a position adjustment factor wherein at least one listing is associated with said position adjustment factor (column 21, line 51, through column 22, line 50). Soulanille does not disclose an enhanced display format, wherein at least one said listing in said response includes said enhanced display format, but Littlefield teaches enhanced display formats, wherein at least one listing in a response includes the enhanced display format (column 3, line 58,

through column 4, line 20). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention, for the stated advantages of enticing search engine users to select the search results with enhanced display formats, and profiting from fees for such enhanced displays.

**Claim 48**

Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Soulanille et al. (U.S. Patent 7,110,993) in view of Bates et al. (U.S. Patent 6,801,906). Soulanille discloses an information distribution system, comprising: a user subsystem, said user subsystem providing for a request from a user and a response, wherein said user subsystem provides for receiving said request and providing said response (Abstract; column 8, line 59, through column 9, line 6); a listing subsystem, said listing subsystem providing for a plurality of listings, wherein at least a subset of said listings are included in said response (Abstract; column 9, lines 7-20); and an administrative subsystem, said administrative subsystem providing for a tier, wherein said administrative subsystem selectively identifies two or more listings within said response for inclusion in a tier, wherein said listings within said tier are ordered in accordance with at least one of: (a) a random heuristic; (b) a weighted random heuristic; and (c) a placement heuristic not applied to all of the listings in said response (Abstract; column 9, lines 7-20; column 16, line 57, through column 17, line 23; column 21, line 59, through column 22, line 50; Figure 7). The paid listings from advertisers are regarded as one tier, the unpaid listings following them as a second tier. Soulanille does not disclose a plurality of groups, wherein each said listing in the response is associated



with at least one said group, each said group being determined at least in part according to the request, but Bates disclose an information distribution system including a plurality of groups, wherein each listing in the response to a search request is associated with at least one said group, each said group being determined at least in part according to the request (Abstract; column 3, lines 18-45). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to include such a plurality of groups, for at least the stated advantage of concentrating on material which is new (Bates, column 1, line 65, through column 2, line 14).

#### **Claims 49-56**

Claims 49, 52, 53, 54, 55, and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soulanille et al. (U.S. Patent 7,110,993) in view of Watanabe et al. (U.S. Patent Application Publication 2003/0093482) and Bates et al. (U.S. Patent 6,801,906). As per claim 49, Soulanille discloses configuring a plurality of administrative rules to organize a plurality of listings within a response into at least one tier based on a plurality of tier criteria, wherein the administrative rules include a tier placement heuristic for ordering listings within the tier, wherein not all listings within the response belong to the tier (Abstract; Figure 7; column 16, line 51, through column 17, line 23; column 21, line 51, through column 22, line 50). Soulanille does not expressly disclose inputting the tier criteria to define the number of tiers in the response and number of listings within the tiers, but as one or more computers apply the administrative rules, including a number of tiers in the response and number of listings

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within at least one tier (*ibid.*; column 7, lines 37-59; column 8, lines 19-26), and it is well known to input programs, files, and particular criteria into computers, as taught, for example, in Watanabe (paragraphs 57 and 58), it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to input the tier criteria, for the obvious advantage of causing the computer to carry out the desired procedures.

Soulanille does not disclose a plurality of groups, wherein each said listing in the response is associated with at least one said group, each said group being determined at least in part according to the request, but Bates disclose an information distribution system including a plurality of groups, wherein each listing in the response to a search request is associated with at least one said group, each said group being determined at least in part according to the request (Abstract; column 3, lines 18-45). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to include such a plurality of groups, for at least the stated advantage of concentrating on material which is new (Bates, column 1, line 65, through column 2, line 14).

As per claim 52, Soulanille discloses a computer automatically applying rules without human intervention (column 8, lines 19-26), making it obvious to load the necessary computer program, as set forth above with regard to claim 49.

As per claim 53, Soulanille discloses that the administrative rules include a priority metric calculation, wherein the priority metric calculation influences the

positioning of said listings in the response (Figure 7; column 16, line 51, through column 17, line 23; column 21, line 51, through column 22, line 50).

As per claim 54, Soulanille discloses that listings are selectively placed into one of a plurality of tiers in accordance with the priority metric calculations associated with the listings (Figure 7; column 16, line 51, through column 17, line 23; column 21, line 51, through column 22, line 50).

As per claim 55, Soulanille discloses that the administrative rules can provide that listings belonging to the same tier are ordered in a random fashion (column 21, line 51, through column 22, line 50).

As per claim 56, Soulanille discloses that the administrative rules can provide that listings belonging to the same tier are ordered in a random weighted fashion that is influenced by the corresponding priority metrics (column 21, line 51, through column 22, line 50).

Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Soulanille et al. (U.S. Patent 7,110,993), Watanabe et al. (U.S. Patent Application Publication 2003/0093482) and Bates et al. (U.S. Patent 6,801,906) as applied to claim 49 above, and further in view of official notice. Soulanille discloses multiple types of placement heuristics (column 16, line 51, through column 17, line 23; column 21, line 51, through column 22, line 50), but does not disclose associating a particular type of placement heuristic to coincide with a particular type of request. However, official notice is taken that it is well known to match particular kinds of answers, or particular procedures, to particular kinds of requests. Hence, it would have been obvious to one

of ordinary skill in the art of electronic commerce at the time of applicant's invention to associate a particular type of placement heuristic to coincide with a particular type of request, for the obvious advantage of placing listings likely to be of greater interest to the user, or value to advertisers, in more prominent positions (an example would be using placement heuristics which involve geographical categorization in response to search request which include geographical limitations or preferences).

Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Soulanille et al. (U.S. Patent 7,110,993), Watanabe et al. (U.S. Patent Application Publication 2003/0093482) and Bates et al. (U.S. Patent 6,801,906) as applied to claim 49 above, and further in view of Might et al. (U.S. Patent Application Publication 2003/0177076). Soulanille appears to provide for a plurality of request types, because of the "Select a Category" and "What City" features in Figure 7, and Soulanille provides for (b) a national request constrained by name (Figure 7; column 16, line 51, through column 17, line 23; the name being a term like "zip drive"). Might teaches using category and geographic area to constrain requests (paragraphs 19 and 27), implying at least (a) a national request constrained by category and (c) a local request constrained by name. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the system to provide for a plurality of request types including at least two of those listed, for the obvious advantage of finding conveniently located businesses selling desired products or services.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-56 have been considered but are moot in view of the new ground(s) of rejection.

The Manual of Patent Examination Procedure (2144.03 (C)) states, in regard to traversal of Official Notice:

C. If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence.

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also *Chevenard*, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable invention without reference to the examiner's assertion of official notice would be inadequate.

It may be questioned whether Applicant's traversals have met the requirement for adequacy; nonetheless, Examiner has responded by making of record prior art expressly teaching the facts officially noticed in the rejections of claims 2, 25, 25, 38, and 49, as traversed by Applicant.

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The common knowledge or well-known in the art statements in the previous office action which were not expressly traversed are taken to be admitted prior art, because Applicant did not traverse Examiner's taking of official notice. (These are found in the rejections of claims 28 and 50.)

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bode et al. (U.S. Patent 7,206,778 B2) disclose a text search ordered along one or more dimensions; in particular, in columns 21 and 22 of Bode, the paragraph beginning "3. Long Single-Phrase Query" provides an example of a plurality of groups, wherein each said listing in the response is associated with at least one said group, each said group being determined at least in part according to the request

Tomaiuolo et al., ("Maximizing Relevant Retrieval") disclose ranking the relevance of search results. Dzilna ("Publishers Fight Declines in Web Advertising CPMs") discloses variable per-hit fees (depending on how far through the advertiser's site the potential customer goes). The anonymous article, "Search Tools -- Hotrate Those Replies," basing results on several criteria. Sherman ("Google Introduces Web Directory Using Netscape's Open Directory Project Data") discloses ranking and prioritizing search results by relevance. Ojala ("Google Views the Present, Future") discloses determining the relevance of search results for display.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas D. Rosen, whose telephone number is 571-272-6762. The examiner can normally be reached on 8:30 AM - 5:00 PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith, can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Non-official/draft communications can be faxed to the examiner at 571-273-6762.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Nicholas D. Rosen*  
NICHOLAS D. ROSEN  
PRIMARY EXAMINER

May 2, 2007